



Financial Institutions Division
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June 2009

To: Consumer Small Loan Lenders, Industrial Loan and Thrift Companies, and Other Interested Parties

From: Kevin M. Murphy
Deputy Commissioner of Commerce

Re: Legislative Changes to Minnesota Statutes Section 47.60, the Consumer Small Loan Law

Two separate legislative proposals (House File No. 2123 and Senate File No. 806) were recently passed by the Minnesota Legislature and signed into law by Governor Pawlenty. The full text of each bill is available on the Internet.¹

House File 2123

| <u>Section No.</u> | <u>Affected Statute</u> | <u>Effective Date</u> |
|---|-------------------------|-----------------------|
| Article 3 Section 2 | 47.60, subd. 1 | August 1, 2009 |
| This provision substitutes "business entity" for "person" in the definition of consumer small loan lender, commonly referred to as a "payday lender". | | |

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| Section 3 | 47.60, subd. 3 | August 1, 2009 |
| This provision substitutes "business entity" for "person" and specifies that the consumer small loan law applies to loans made to Minnesota residents and includes loans made over the internet by lenders who do not have a physical presence in Minnesota. | | |

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| Section 4 | 47.60, subd. 6 | August 1, 2009 |
| This provision substitutes "business entity" for "person" in the penalties for violation section. | | |

¹

Go to <http://www.leg.state.mn.us/> and click on the "House" or "Senate" icon. Make sure to select "Regular Session" in the box under the word "Legislation. Then insert hf 2123 or sf806 in the get bill box, then click on go, then click on "Status of Bill in House (or Senate)", then click "Session Law Chapter 37 (or 68 for the Senate File)".

Senate File 806

1

47.60, subd. 4(b)

Retroactive
January 1, 2009

This provision requires a payday lender to file an annual report with the Commissioner that contains specific information outlined in 47.601, subd. 5, including the total dollar amount collected on consumer short-term loans, the average annual percentage rate, the number of individual borrowers who obtained consumer short-term loans; and the number of loans obtained by the borrowers. It appears that the 47.601 reference should be to subdivision 4, not subdivision 5.

2

47.60, subd. 6

August 1, 2009

This provision provides that a person who violates any provision of the consumer small loan law, is liable under 47.601, subd. 7 of the new law. This section applies to consumer small loans made on or after August 1, 2009. It appears that the 47.601 reference should be to subdivision 6, not subdivision 7.

3

47.601, subd. 1

August 1, 2009

Subdivision 1 contains definitions to define terms under a new section of law. Terms defined are "Borrower", "Commissioner", "Consumer short-term loan", and "Consumer-short term lender".

Subdivision 2, paragraph (a) specifies provisions that a contract or agreement between a consumer short-term lender and a borrower may not include.

Subdivision 2, paragraph (b) provides that any provision prohibited in paragraph (a) is void and unenforceable.

Subdivision 2, paragraph (c) requires a consumer short-term lender to provide a copy of the loan contract to the borrower and describes the disclosures that must be included in the contract.

Subdivision 2, paragraph (d) provides that the holder or assignee of a check or other instrument takes the instrument subject to all claims by and defenses of the borrower against the consumer short-term lender.

Subdivision 3 prohibits a consumer short-term lender from engaging in debt collection practices referenced in Section 332.37.

Subdivision 4 requires a consumer short-term lender to file an annual report with the Commissioner of Commerce that contains information as specified in this section.

Subdivision 5 specifies that a consumer short-term loan transaction is deemed to take place in Minnesota if the borrower is a Minnesota resident and the transaction is completed, either personally or electronically, while the borrower is physically located in Minnesota. This section includes transactions via the internet.

Subdivision 6 specifies that unless a bona fide error is made, an individual or entity who violates subdivision 2 or 3 is liable for all money received in connection with the loan, specified damages, costs, disbursements, reasonable attorneys fees, and injunctive relief. The section also specifies when a loan is void and the borrower is not obligated to pay any amounts owed.

Subdivision 7 authorizes the Minnesota Attorney General to enforce this section under section 8.31 (Additional Duties of the Attorney General).

Subdivision 8 provides that the remedies in this section are cumulative and do not restrict other available remedies. It further specifies that the provisions are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

4

53.09, subd. 2

Retroactive
January 1, 2009

This provision requires an industrial loan and thrift company to include, if applicable, the information required in 47.601, subd. 5 in its annual report to the Commissioner.

It appears that the reference should be to subdivision 4, not subdivision 5.

A significant change mandated by both bills is that payday lenders that do not have a physical presence in Minnesota that are making loans to Minnesota residents via the Internet must be licensed by the Commerce Department effective August 1, 2009. These entities must also adhere to the fee schedule and other requirements of Section 47.60 and the new Section 47.601.

The above summary is provided for your convenience and is not intended as legal advice. The statutes are complex and reference to the bill is recommended.